

1 and I assume when you look at your wall from your
2 property, you mean the right side?

5
3 A No, the part that comes from 5
4 Huguenot runs down the left part when you look and
5 even now it's still not perfect. It's like a river
6 when it really pours, it's like a river but the
7 other people's property is on the right side.

8 Q So, my question is, could it be the
9 time period, the same time period as when you
10 complained formally and in writing to the building
11 inspector with regard to work that was being
12 performed by the owners of 3 Huguenot Drive?

13 A Yes, it could have been, yes.

14 Q How many times did you have
15 meetings with Mr. Carpaneto with regard to this
16 particular wall?

17 A I don't know if I ever met him but
18 I met him around the time of the issue with when
19 the 3 Huguenot Road, which was-- you know, that
20 was a very complicated circumstance because they
21 were in the process of people building --

22 MRS. MULLINS: Your Honor, I move to
23 strike, I asked him with reference to this
24 wall.

25 THE COURT: The last part of your

1 answer is stricken. Repeat the question

2 Q How many meetings did you have with
3 Mr. Carpaneto concerning this wall?

4 A I don't believe I had any meetings
5 with him, my wife may have met him but it was not
6 more than once but I did not have meetings, we had
7 phone conversations but not meetings.

8 Q How many phone conversations did
9 you have with him?

10 A Two or three, something like that.

11 Q Your, yourself?

12 A Yes, those phone conversations were
13 was--

14 THE COURT: No, stop. Mrs. Mullins,
15 you have to object.

16 MRS. MULLINS: I am trying to. He
17 talks very quickly. Could we have the last
18 question read back.

19 (Whereupon, the last question was
20 read back by the reporter.)

21 Q Those phone conversations that you
22 testified to were between yourself and Mr.
23 Carpaneto; is that correct?

24 A Yes.

25 Q Did your wife also have phone

1 CONVERSATIONS WITH MR. CARPANETO?

2 A She may have.

3 Q Do you know how many?

4 A No, but it would not be more than a
5 couple in my opinion.

6 Q Do you know if your wife had any
7 meetings with Mr. Carpaneto?

8 A I don't think so but when we wanted
9 to get the copy of something, she may have come and
10 tried to get a copy.

11 Q How long have you lived at 2
12 Lafayette?

13 A I guess we moved in December of
14 1988, so eighteen years.

15 Q Have you ever, in the eighteen
16 years that you lived there, with the exception of
17 this present case, ever complained about this wall
18 to anyone?

19 A Not formally.

20 Q How about informally?

21 A If you look at it, it's one of
22 those things --

23 MRS. MULLINS: Move to strike.

24 THE COURT: Stricken.

25 A Only to family and friends.

1 Q Did you ever make any complaints
2 formal or informal to the Mr. Rotenbergs?

3 A Not to my knowledge.

4 Q To the building department?

5 A Not to my knowledge.

6 Q How were you made aware that Mr.
7 Rotenberg was selling the house?

8 A My wife said that Mr. Rotenberg
9 said it and that is in our letter to him on April
10 14th.

11 Q When were you made aware of that?

12 A Before we wrote that letter on
13 April 14th.

14 Q Do you recall how you were made
15 aware?

16 MRS. FIORE: It's been asked and
17 answered.

18 THE COURT: Do you recall how, yes or
19 no.

20 A No.

21 Q Isn't it true that you learned that
22 the house was being listed for sale and you took
23 the opportunity to have an attempt to have
24 substantial work done on your side at this time?

25 MRS. FIORE: Objection.

1 THE COURT: Now, could you
2 answer that.

3 A It's not our wall, it's his wall,
4 there is no dispute about that to my knowledge,
5 so --

6 MRS. MULLINS: Move to strike.

7 THE COURT: Stop.

8 A Sorry.

9 Q The question is, isn't it true that
10 you became aware that the house was being offered
11 for sale and you took this opportunity --

12 A No, that is not true the trigger
13 was Mr. Rotenberg asking to have a mason
14 cosmetically repair the wall. We did not know he
15 was selling the house.

16 Q But you testified that you became
17 aware that he was going to sell the house?

18 A Yes, after that.

19 Q And after that is when you wrote
20 your letter and contacted the building department
21 and had all of these conversations; isn't that
22 true?

23 A Yes, but we did not want the damage
24 to the wall--

25 Q Yes or no?

1 A We did not want the damage to the
2 wall being covered by stucco covering it. It did
3 not seem fair to us or to the new buyers, it's a
4 potentially dangerous situation.

5 Q You used the word cosmetic several
6 times, did Mr. Rotenberg ever use the word cosmetic
7 when he described to you what was going to be done
8 to your side of the wall?

9 | A Not to my knowledge.

10 Q You did not have any conversations
11 with the contractor; did you?

12 A A contractor of Mr. Rotenberg?

13	0	Yes.
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14 A No.

15 Q Did your wife have any conversation
16 with the contractor?

17 A I don't know the answer to that but
18 Mr. Rotenberg --

19 THE COURT: Stop.

20 MRS. MULLINS: Nothing further, Your
21 Honor.

22 MRS. FIORE: Nothing further.

23 MR. GREENWALD: Am I permitted say
24 something?

25 THE COURT: You are here to testify,

1 that means you are here to answer the
2 questions. I heard the question and I heard
3 your testimony, so, I thank you for your
4 testimony and you are excused. If you wish,
5 you may remain in the courtroom and hear
6 the rest of the trial. You don't have to
7 but the court is open. You could stay if
8 you wish.

9 THE COURT: Do the People have any
10 other testimony or evidence they would like
11 to present.

12 MRS. FIORE: No, Your Honor at this
13 time the People rest.

14 THE COURT: Okay.

15 THE COURT: Mrs. Mullins?

16 MRS. MULLINS: At this time I would
17 like to make a motion and renew my prior
18 motion but on somewhat different grounds.

19 At this point, the Defendant's move
20 to dismiss the summons issued in this case
21 based on the fact that the People have
22 failed to prove beyond a reasonable doubt
23 that the Defendant has violated the section
24 302.7 of the New York State Building Code.

25 Further and in particular Your

1 the factual section of the accusatory
2 instrument.

3 That was not done certainly when it
4 was served and now the People have put
5 forth three witnesses and that still has
6 not been established.

7 Your Honor, based on that, the
8 Defendants move to dismiss the action with
9 prejudice.

10 THE COURT: Okay, I'm going to
11 reserve my decision on your motion for a
12 direct verdict, which is what it is and ask
13 you to please proceed with your case.

14 MRS. MULLINS: Could I have a short
15 break?

16 MRS. FIORE: Before we take that
17 break, could I be heard as to my
18 application?

19 THE COURT: I don't know what you
20 could have.

21 MRS. FIORE: My application is also
22 for a direct verdict in favor of the People
23 Your Honor.

24 THE COURT: You can't to that.

25 MRS. FIORE: There is a prima facie

1 case --

2 THE COURT: Whether or not you made a
3 prima facie case, the Defendant still has a
4 right to put on their own evidence, so this
5 is not a recognized motion.

6 MRS. FIORE: Yes, Your Honor.

7 THE COURT: Okay, let's have a five
8 minute break.

9 MRS. MULLINS: I would like to speak
10 to my witnesses.

11 (Whereupon, a short recess was taken
12 by all parties.)

13 THE COURT: Mrs. Mullins, call your
14 first witness.

15 MRS. MULLINS: We call John
16 Annunziata, professional engineer.

17 THE COURT: Remain standing and I
18 will swear you in.

19 J O H N A N N U N Z I A T A , a witness herein,
20 having been first duly sworn by the Court, was
21 examined and testified as follows:

22 DIRECT EXAMINATION BY: MRS. MULLINS:

23 Q Good morning Mr. Annunziata, could
24 you tell the Court your formal education in the
25 field of engineering?